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THE REORGANIZATION OF CONGRESS

By Franklin L. Burdette

The action, on February 14, by the new Joint Committee on the Legislative Budget, which then recommended reductions of six billion dollars in the President's estimates, is a significant re-assertion of Congressional authority. But this illustration of the Constitutional importance of the Reorganization Act of 1946 does not mean that the place of the Legislature in the American system of government is as yet wholly clear.

The first paragraph of the Constitution, after the Preamble, provides that: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Does this language mean that Congress should not delegate law-making power to Administrative Agencies? Or does it merely mean that an agency like OPA or NLRB must be subject ultimately to Congressional control? The issue has never been fully resolved.

The doctrine that legislatures ought to confine themselves to ultimate responsibility is expressed by men who would trust the experience and policy-continuity of a strong executive. It is not a new doctrine, having been clearly stated by John Stuart Mill in his Considerations on Representative Government (1861). He asserted, as our early national experience had taught, that representative assemblies cannot properly execute the law. "But it is equally true," Mill wrote, "though only of late and slowly beginning to be acknowledged, that a numerous assembly is as little fitted for the direct business of legislation as for that of administration."

In Mill's opinion laws should be drafted by a small commission appointed by the executive. The legislature, while authorized to suggest bills, would have only the power to enact, reject, or remit for further consideration. "The proper office of a representative assembly," he thought, "is to watch and control the government. . . ."

Members of Congress, regardless of political viewpoint, have usually feared rather than applauded the rapid progress of Mill's argument. In testimony before the Joint Committee on the Organization of Congress, Representative Jerry Voorhis of California (defeated for re-election in 1946) said:

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"I doubt that more than a mere handful of Americans would favor such a course for our country's government. It means a gradual growth of a type of government which the whole tradition of our country is against. . . . Congress has to a considerable extent permitted itself to become absorbed in . . . routine matters and has thus largely abdicated its most essential function, namely, that of devising on its own motion long-range legislative programs geared to the necessities of the times."

Representative E. E. Cox of Georgia replied:

"You have been classified as an ultra progressive and I as a mossback reactionary, and still there is not the slightest difference between my views and the statement you make."

II

Both Woodrow Wilson and Lord Bryce, more than a half-century ago, pointed out that the internal organization of Congress is peculiarly designed to discourage the formulation of broad, co-ordinated governmental policies. Congress is charged with wider duties, and is more distinctly separated from the executive, than any other major legislature in the world.

Relying heavily upon its own resources, Congress has divided its labors among standing committees in each House. Important legislatures abroad, depending on guidance from the executive -- indeed, making what we call the Administration virtually a committee of parliament -- have never utilized standing committees to the degree known in America.

The committee system, developed early in the past century, has tended to destroy the unity of Congress. Conflicting jurisdictions of committees -- "little legislatures" as they have been called -- have time and again prevented general plans for national policy.

Passage of the Legislative Reorganization Act, under the leadership of Senator La Follette and Representative Monroney, was an indication of the concern in Congress over this dilemma. Faced with an undeniable need for broad plans, at a time when the Administration was more than ready to provide them, Congress could either act or reconcile itself to a permanent decline in prestige. It chose to act.

The new law reduces committees in the House from 48 to 19 and in the Senate from 33 to 15. It defines their jurisdictions, limits the number on which members may serve, authorizes larger staffs and adds to their investigatory powers. Revenue and appropriations committees are directed to co-operate in analyzing the Federal budget before adoption. The currently proposed reduction of six billions is a result of that co-operation.

The Act provides for expansion of legislative reference and bill drafting services. It requires the registration of lobbyists. Con-

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gress is relieved of much detail by the substitution of administrative or judicial procedures for private bills concerning pensions, tort claims, bridges, or correction of military or naval records. Congressional salaries are increased and members are made eligible for an exceptionally generous contributory retirement system.

III

Congress does not merely make laws. It also supervises administration and controls expenditure. The power to investigate, to obtain information from many sources, is indispensable to all three functions.

As it passed the Senate, the Reorganization Act prohibited special committees, contemplating investigations only by the standing committees to which legislation is regularly referred. The leadership of the House insisted on eliminating this restrictive provision.

The Senate position was based on the view that special investigations duplicate the work of standing committees, which must hold hearings again if specific remedial legislation is proposed. It was further argued that the efficiency of legislators and administrators is alike impaired by frequent and repetitious hearings; and that more dependable information could be obtained by standing committees with the increased powers and larger staffs provided by the reorganization.

In re-establishing two special Senate committees in the Eightieth Congress (to investigate the national defense program and to study the problems of small business), Republican leaders insisted in face of opposition that the earlier Senate attitude on the subject should not prevent continuation of these investigations in their original manner.

Special investigations have had great advantages in the past, and not all of those advantages are preserved in the recent strengthening of standing committees. The special committee has been able to cut across the jurisdictional limits of the standing committees. More important, it is possible to obtain information by special investigation when standing committees through partisanship or inertia are reluctant to act. Moreover, men competent to ferret out carefully concealed conditions are not always assigned to the appropriate standing committees.

A suggestion by Senator Tydings (D., Md.) has merit in tending to combine the advantages of special and standing committees in investigations. Legislators not members of a particular standing committee might be given special, non-voting status in the committee for the purpose of advocating and perhaps conducting an investigation.

Freedom of debate in the Senate is a factor in investigations which is not to be overlooked. The privilege of any member to express his

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views at length may well force a majority to permit investigation which a few Senators regard as essential. The advantages in freedom of debate can be retained without permitting extended filibusters.

IV

The Legislative Reorganization Act, as now in effect, is an important beginning in Congressional self-examination and improvement. The new law does not deal with the troublesome question of committee assignments by seniority, a practice more easily condemned than improved.

The Senate version of the bill contemplated majority and minority policy committees in each House. Moreover, a joint legislative-executive council was planned, to consist of the majority policy committees (with the minority invited on some occasions), the President and Cabinet. These provisions were rejected by the House leadership.

Development of a truly co-operative relationship between Congress and the Administration is the crux of the problem of long-range legislative reorganization. The legislative-executive council, firmly institutionalized and adequately staffed, offers inspiring possibilities for lifting Congress above the compartmentalization which has been the by-product of its committee system. It is noteworthy that the principle of such a council is now employed in one form or another in 12 States.

From the point of view of the executive, such a council would afford a regular, rather than intermittent, flow of advice and information from sources both elective and appointive. The actions of the council would of course be only recommendations for Congressional consideration. But they would carry the weight and prestige of majority participation.

While representative government thrives on discussion, it makes progress by means of intelligent organization. The future role of legislatures hangs more critically in the balance than the more firmly settled places of the executive and judiciary. Students of Mein Kampf are well aware that Hitler's first attack was on parliamentary incompetence. The vitality of legislatures is the barometer which measures the strength of democracy or the rise of dictatorship.

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Not Merely Gossip *A Supplement to* Human Events VOL. IV, NO. 8

By Frank C. Hanighen February 19, 1947

Congress is really making progress and at a better-than-average pace. The legislative body under Republican leadership is not dilatory, weakly compromising and torn by party and factional strife -- as is the picture presented by too large a portion of the press. A well-documented statistical study is scheduled for early release on Capitol Hill showing that the legislative program has moved faster than in many years, that the two Houses have acted with dispatch and efficiency.

The distorted version of Congressional activities which currently appears in many papers is the result of a number of factors: (1) Misunderstanding is caused by the tendency of many reporters and editors to try to dramatize and personalize current legislative business in which there is actually much less than meets the eye. Some newspapermen are too prone to discover major conflicts in situations where there are only lesser disagreements. (2) A few influential members of the press are personally Jeffersonian Democrats. Their antagonism to the New Deal led them to sympathize for some years with the Republicans. Now with Truman in what they conceive as a "middle-of-the-road" phase, their old Democratic allegiance has revived and they joyously have at the GOP. (3) Relationships between Washington members of the press and the Democratic executive branch have grown very close over the years and it is not surprising that many play ball with those from whom they customarily get "news breaks." (4) There is the noisy contingent of "totalitarian liberals" who would criticize Republicans in particular and Congress in general in any case.

Observers who try to see the picture objectively believe that whatever the final score on the Republican Congressional regime, it is too soon to pass judgment today. Much of the criticism is simply the carping prevalent during the opening weeks of a session. Some of it arises from unintelligent impatience with the necessarily deliberate processes of the Legislature.

Attacks on the Republican budget-makers for their effort to reduce appropriations for the armed services are often naive. It is a commonplace that Government agencies usually ask for more than they hope to get and after suffering cuts in their requested appropriations end up with about what they want. If the War and Navy Departments are any different in this respect, it has yet to be proved.

Additionally, the uproar about the reduction in military appropriations is undoubtedly fed by the selfish desires of some Congressmen who want to scuttle the whole economy policy. When a Member of Congress loftily assails the "budgetary sabotage of our defense system" one may pardonably wonder whether the Honorable Member has his mind not on Army and Navy but on Rivers and Harbors.

Here lies the great danger to the success of the Eightieth Congress. Many a legislator who solemnly talks of the necessity of economy has some pet project for his district which requires an appropriation. Logrolling between such individuals can indeed threaten the whole economy program. If the Republican leadership can surmount this peril, it will indeed have moved mountains.

Another danger looms -- the surviving "dead hand of the Civil War." It is not generally known that there is a proposal before the Rules Committee of the Senate likely to cause much trouble and delay. The measure would change the cloture rule, so that limitation of debate can be voted by a simple majority of the Senate rather than by a two-thirds vote. Freedom from cloture has always been a powerful weapon in the hands of the Southerners who will filibuster rather than allow a vote on such matters as anti-lynching legislation, etc. If this proposal should reach the floor,

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then the Confederate battalions might upset the calendar of business and throw the Senatorial machinery into great confusion.

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Whatever stand Marshall takes at Moscow, the briefing given him by close advisers is clear and well-defined. An agreement with Russia about Germany is of course desirable, they say, but not at any price. Russia should be told that we have an alternative policy -- that of building up separately Western Europe, including Western Germany. Molotov was informed -- it is now related -- that we had a similar policy as to Italy last year, and this warning served to bring the Soviets around to some degree of compromise. The agreements reached on Italy and the Balkans, however, involved many concessions to Russia, which were made only because these treaties were viewed as of secondary importance to the German treaty. A stand must be firmly made on this major problem.

Marshall's advisers, therefore, emphasize that the German treaty -- unlike the minor treaties -- must be comparatively workable and free from dangerous compromises. The United States delegation must insist on the insertion of "escape clauses," in those parts of the German pact which seem dubious. Marshall's ruling consideration, they insist, should be that the United States will agree to no foreign commitments which later it might not wish to observe. It remains to be seen whether Marshall will follow this counsel.

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Presidential talk ---- Political dopesters in Washington are not generous in rating Stassen's chances. They may be wrong. An important Midwest Republican who holds no brief for the former Minnesota governor writes this column a letter reporting vigorous Stassen sentiment in his own state: "Despite a bad break in the weather, Stassen drew a whale of a crowd for our annual dinner. He went over big."

Facing the oil painting of a nude Athenian courtesan in the Press Club lounge, three middle-aged members one day last week sat apparently absorbed in the study of political science. "Taft is talking too much," remarked one, querulously -- for he likes the Ohioan. "Yes," concurred another, rather irritably, "and he is usually saying that he hasn't made up his mind. Like a woman." "What's wrong with that?" retorted the third. "It's honest anyway and that's Taft's greatest asset -- his honesty. Don't you think so?" -- to the first speaker. The latter roused himself from what was presumably abstract contemplation -- "Yes, yes, of course. But what I always say is that a public man should space and time his shots. You get tired of someone who is always talking." The other agreed; rather absently, it seemed. And all fell silent -- but whether because of the wisdom of the remark or because they had turned their attention from science to art, cannot be ascertained.

There is a rumor that the Man in Albany will soon come out against the Closed Shop. Such a move would indeed draw applause from conservatives who have been growing cool towards Governor Dewey after noting that in his lavish New York State budget he shows no great urge for economy.

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Senator Brewster has urged that Lilienthal's name be withdrawn from nomination as Chairman of the Atomic Energy Commission, and that the name of former Senator Robert M. La Follette, Jr., be submitted. Brewster says that La Follette would accept and that a majority of Senators would vote for him. There is little doubt that the Brewster suggestion will draw much approval in the Senate. This column reported on November 20 that Senator Vandenberg and Secretary of State Byrnes both urged President Truman last fall to name La Follette to the post. The latter with his characteristic modesty did not seek the job -- in contrast to the zeal with which Lilienthal worked for it. Truman was thus offered an opportunity to rise above party considerations. Instead, he ignored the advice of Vandenberg and Byrnes

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and a week before the elections in November made the appointment on a political basis. This is the real issue.

The fact that Brewster backed La Follette should dispose of the charge that the "power trust" is behind the fight against Lilienthal. Brewster is an opponent of public ownership of utilities. So is Senator Bridges, who is also in favor of La Follette and against Lilienthal. And La Follette has a much longer record in support of public ownership of utilities than Lilienthal. The opposition to Lilienthal rests on a much higher plane than the rather hysterical advocates of the former TVA chief's confirmation will admit.

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Truman's recovery of some of his lost prestige has inspired some of his friends to speculate on the possibility of a triumphant march to re-election over the body of a divided Republican Congress. Nonpartisan observers do not agree with this sanguine viewpoint and analyze the situation as follows. Three pieces of major legislation constitute the most important potential points of controversy between Executive and Legislature: Appropriations, Taxes and Labor. If there is a war, it will be won or lost on one or more of these fronts.

It is not considered very likely that Truman will stage a bitter-end fight on either of the first two subjects. Naturally, if the Legislature fails to balance the budget and at the same time reduces taxes, Truman will have an excellent chance of going to battle with Congress and of winning. But the chances are small that Congress will take such a vulnerable step. If, on the other hand, that body does pass financial bills commanding general public approval, it is most improbable that Truman will veto them.

As for labor legislation, there is a distinct possibility that Truman may veto a reinforced Case bill (possibly the only labor law which Congress will pass, say observers). Such an action would signify a sharp modification of his new "conservative" policy, to which is attributed his recapture of public favor. If such a bill should fail to pass over a veto, then Congress would leave Washington without any labor legislation enacted into law on an issue which the public regards as urgent. In such a case, Congress might receive some blame; but major responsibility would fall on Truman. The President faces no high and easy road to victory in 1948.

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Much -- but not enough -- is said about the Fifth Partition of Poland. Less, unfortunately, is said of the First Partition of Korea. For that is what the Koreans apparently face in the present situation. Korean leaders look with apprehension at the 38th Parallel, fixed as the dividing line between the northern Russian and southern American zones. They regard with suspicion the fact that our State Department has never published the text of the agreement with Russia, establishing this partition line; neither date, nor place of meeting, nor content have been made public. Furthermore, both the State Department and Russia keep using the word "trusteeship" with the result that Koreans who were promised independence under the Cairo Declaration feel that their country is indeed partitioned indefinitely.

Our commander, General Hodges, has done little to allay the growing resentment of Korean leaders in the American zone. Last November, Korean elections in our zone gave 43 out of 45 seats to a Centrist-Rightist bloc under the democratic independence leader Dr. Synghman Rhee. Yet when the results were known, Hodges immediately appointed 45 members on his own authority, of whom only one was a Rhee follower -- apparently an effort to appease Russia. Hodges, now in Washington for "consultation" with the State Department, might well emulate General Mark Clark by making known to the press the facts about this part of our far-flung occupation line.

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Notes and Quotes

John T. Flynn has published another pamphlet -- The Smear Terror. The material he produces is sensational, as witness the opening paragraphs: "Would you believe that there are in this country several outfits that specialize in the destruction of reputations? I can name an organization with large offices equipped to destroy the reputation of anyone whose influence in the community gets in the way of its clients.

"Having chosen its victim, it lays out a carefully prepared plan of action. The enterprise is labeled professionally a 'project.' This is organized like a program for selling a commercial product. The type of smear is decided on. An estimate is made of the expenditures for personnel, travel, snooping, publicity, etc. A budget is prepared. The persons interested are informed of the cost. When the money is in hand the job is put in motion by a set of trained character assassins who make a living out of this sort of thing and do very well at it." Mr. Flynn scrupulously documents this and other charges which he makes.

The author himself publishes the pamphlet (at 15 E. 40th St., New York, N.Y.) -- a remarkable fact, considering his long and highly respected reputation as a journalist. Years ago, writers of exposés, like Lincoln Steffens, Ida Tarbell, et al., found ready markets in newspapers and magazines and their book manuscripts were eagerly solicited by recognized publishers. Today, those who seek to unveil conspiracies by certain special interests can rarely obtain magazine outlets and book trade editors are similarly inhospitable. Accordingly, Mr. Flynn has turned to the medium widely used in the Eighteenth Century for disseminating his ideas. He reportedly sold half a million copies of his other pamphlet, The Truth About Pearl Harbor. It would not be surprising if The Smear Terror fared as well.

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The Swiss radio (February 12) describes an interesting development in the much-discussed "re-education of Germany": "After having bitterly fought Nazi propaganda, the Swiss people naturally assumed that we would be consulted in the re-education of Germany. First of all there is the language, for high German is the official language of a part of Switzerland. Second, there is the fact that those who did not fight Germany could find more listeners in Germany than the occupying Powers.

"Eminent scientists have asked for temporary leave to teach at German universities and others are accepting lecture tours in Germany. German students have been invited to schools in Switzerland while the book donations and so on are a modest contribution. These efforts are to be extended in 1947 with the Swiss teaching of German prisoners of war in Britain."

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"Men become subdued," says The Tablet (London, December 28, 1946), "to the medium in which they work and live, and those who live beset by material considerations for themselves or their neighbors, very easily come to think that such material considerations ought to be the decisive ones. Then they wholly lose sight of one of the best attested truths of history, which is that genuine individual freedom is one of the greatest sources from which material well-being takes its rise, and that in those societies where that freedom has not been suffered to exist, as in the oriental despotisms of which history is so full, the material standard has been extremely low. The basic reason is very simple, that slave labour is wasteful labour because it is reluctant, uninventive and extremely costly to organize. The police States will always be at a great economic disadvantage from the numbers of people employed watching other people."

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